

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2066.04
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	October 10, 2003
DATE OF REPORT:	November 21, 2003
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	December 29, 2003

COMPLAINT ISSUES:

Whether the Switzerland County School Corporation and the Madison Area Educational Special Services violated:

511 IAC 7-23-1 by failing to provide access to a student's educational record, specifically, a videotape made on a school bus.

FINDINGS OF FACT:

1. The Student is fourteen years old and is eligible for special education and related services due to an emotional disability and a learning disability.
2. The Student was provided transportation on a regular school bus with students without disabilities. On Friday, September 12, 2003, the Student engaged in behavior on the bus that was characterized as disrespect to staff. On Monday, September 15, 2003, the bus driver filled out a *School Bus Incident Report to Parents* (Incident Report), and subsequently notified the Parent by telephone.
3. The Incident Report, dated September 15, 2003, identified the disciplinary action to be taken as three days of in-school suspension on September 26, 29, and 30, and was signed by the principal.
4. The School places video cameras in its buses in order to promote student safety, to help s in decision-making regarding students' behavior on the buses (particularly behavior that a bus driver has not personally observed), and to motivate students to behave appropriately on the buses. Bus drivers are among the school personnel responsible for implementation of the code of conduct. The School does not regard the videotapes as records of a law enforcement unit, as the School does not employ school police officers and requires a subpoena before turning over documents or videotapes to law enforcement officials.
5. On or about September 22, 2003, the local special education director spoke with the Parent and advised the Parent that the videotape (the Videotape) from the bus reportedly supported the Incident Report. The local special education director did not view the Videotape.

¹ Upon further review by the Associate Superintendent, the original complaint investigation report has been revised to accurately reflect the application of 511 IAC 7-23-2 to the facts herein.

6. The Parent spoke with the Principal on or about September 26, 2003, regarding the incident. The Principal had reviewed the Videotape as support for her decision to assign the Student to in-school suspension for the activities on the bus.
7. When the parent asked to view the Videotape, the Principal refused the request, citing the School's confidentiality policy that limits a parent's access to educational records that include information concerning more than one student. The policy provides for the parent to examine "that part of the record pertaining to their child, or where this cannot reasonably be done, be informed of the contents of that part of the record pertaining to their child."
8. The Videotape does not show the Student in isolation. Other Students are visible, as the video camera is placed at the front of the bus. The School does not have the technology to blur the images of other students. The director of the special education planning district viewed the Videotape and is prepared, upon the Parent's request, to inform the Parent again of specific information relating to the Student that is visible on the Videotape.

CONCLUSIONS:

511 IAC 7-23-1 permits a parent to inspect and review his or her child's educational records. An "educational record" is defined by 511 IAC 7-17-29 as any record "directly related to a student and maintained by a public agency." It includes audio, video, and other electronically recorded or produced items. A videotape from a school bus, maintained primarily for safety, security, and discipline, is generally considered a law enforcement record, rather than an educational record. However, such videotape may become an educational record if it is shared with school personnel and used in a manner directly related to a student. Findings of Fact #2 through #6 establish that the Videotape is part of the Student's educational record. Although the Videotape was not originally part of the Student's educational record, it became an educational record when the Principal viewed the Videotape and used it as the basis for initiating or otherwise supporting the disciplinary action she assigned the Student. As such, the Videotape became "directly related to a student" and must be considered an educational record.

If an educational record contains personally identifying information on more than the student in question, 511 IAC 7-23-1(h) may limit the parent's access to the record to only that information related to the parent's child. Generally when a single record contains information on more than one student, the school is required to take steps to ensure that information on other students is not disclosed to the parent. However, in this situation, because the videotape is of activities on the school bus, where there is limited expectation of privacy and the students riding the bus are readily visible to the public, the school is not required to protect the images of the other students on the bus. The parent is entitled to view that portion of the Videotape that shows that activities in which the Student engaged that resulted in disciplinary action. Findings of Fact #7 and #8 reflect that the School declined the Parent's request to view the Videotape of the Student; therefore, a violation of 511 7-23-1 occurred.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

The Switzerland County School Corporation and the Madison Area Special Services Unit shall, no later than **December 5, 2003**, make arrangements for and allow the Parent to review that portion of the Videotape involving the Student's activities that resulted in the imposition of disciplinary action. In addition, the School shall maintain the Videotapes as part of the Student's educational record in accordance with requirements of 511 IAC 7-23-3. No later than **December 12, 2003**, the School shall submit a written assurance statement to

the Division that the Parent has viewed the Videotape and that the Videotape will be maintained as required as part of the Student's educational record.